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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/706,378
Filing Date: November 12, 2003
Appellant(s): SMITH ET AL.

Laura R. Grunzinger
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/17/2007 appealing from the Office action mailed 12/12/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

The statement of the status of claims contained in the brief is correct.

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The summary of claimed subject matter contained in the brief is correct.

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

The copy of the appealed claims contained in the Appendix to the brief is correct.

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

A) Claims 1-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Roberts et al (US 2002/0077264).

Roberts teaches articles containing enclosed compositions useful for dishwashing (see title, abstract).

Roberts teaches various suitable materials and in particular the use of polyvinyl alcohol (PVA; see paragraphs 21 and 22). Noting that the applicant teaches the preferred material for their invention is also PVA (see page 11 of the instant specification) with overlapping molecular weight ranges (see page 10 of the instant

specification). In fact Roberts teaches commercial films including the applicant's exemplified M8630 as a most preferred film (see paragraph 25)

In paragraph 27, Roberts teaches a filled pouch which is exposed to a force. Roberts teaches the elongation of the pouch prior to rupture ("extent of elongation") and the maximum stretching degree. The maximum stretching degree of 520% demonstrates the prior art films are inherently deformable.

In paragraph 27, Roberts also teaches a film thickness of 40 microns. Noting first, the applicant does not teach a preferred thickness or even an exemplified thickness and second that the film used in the examples is a known commercial product.

Concerning the volume limitations, in paragraph Roberts teaches a mold 45 mm in diameter and 25 mm in depth yielding a volume of 43 ml.

Concerning the air bubble, Roberts teaches pouches containing air bubble to improve resistance to rupture (see paragraph 88).

Concerning the various builders, Roberts teaches the use of carbonates, surfactants, enzymes, bleaching agents, tripolyphosphates, perborates, percarbonates, silicates

Thus as the prior art teaches identical film materials made by the same manufacturer, pouches containing dishwashing detergent, and having high degree of stretching, such properties as "degree of deformability" would be inherent to those pouches taught by Roberts.

B) Claims 1-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Sommerville-Roberts, Nigel Patrick (US2005/0049164).

Sommerville-Roberts teaches pouched compositions wherein the pouch is made from a stretchable, elastic film that is water-soluble.

Sommerville-Roberts teaches an extent of deformability allowing pouches to be pressure fitted into dishwasher compartments (see par 32).

Sommerville-Roberts further teaches the limits of stretchable materials prior to rupturing (see paragraphs 75-76).

Sommerville-Roberts teaches the preferred use of the exact same material used by the applicant in their examples, namely the use of M8630 PVA film (see paragraph 96). As the prior art material and the instant examples posses the identical film, the examiner argues that the prior art films would inherently exhibit the applicant's claimed degree of deformability.

Sommerville-Roberts further teaches the use of gel detergents (see par 59), builders including the claimed carbonates and percarbonates (see par 51), the inclusion of enzymes (paragraph 121), nonionic surfactants (see examples), bleaches and percarbonates (see par 60), and solvents such as glycerol (see par 29).

Concerning the bubble, Sommerville-Roberts teaches the under filling of the pouch which would inherently create a void or bubble (see par 33).

C) Claims 1-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Pfeiffer (US6492312).

Pfeiffer teaches water-soluble sachets with dishwashing compositions (see abstract).

Pfeiffer teaches the preferred water-soluble film to be PVA with molecular weights overlapping those of the instant application (see cols. 3-4).

Pfeiffer teaches the high tensile strength of the polyvinyl films. Noting that the tensile strength defines the greatest stress a material can be subjected to without tearing.

In claim 1, Pfeiffer teaches the use of gel as the detergent composition.

Pfeiffer teaches the inclusion of builders including the polyphosphates (see cols. 8-9).

Pfeiffer further teaches the use of bleaches, colorants and enzymes (see col. 12, lines 29-36).

Thus as the prior art teaches identical film materials, pouches containing dishwashing detergent, and having high tensile strength, such properties as "degree of deformability" would be inherent to those pouches taught by Pfeiffer.

(10) Response to Argument

The applicant argues that the characteristic of the pouch differ from the material the pouch is made from.

The examiner maintains that the properties of the pouch would be defined by the materials making the pouch. The applicant argues there is a distinction but does not

provide any reason or rational why a pouch made of the same material would function or behave differently.

Merely shaping a film or attaching two-pieces of film would not change the material properties of the film itself.

It should be noted that the applicant's own definition of "degree of deformability" requires a thickness to calculate. The applicant's instant specification is completely devoid of a teaching of thickness that is critical to determining the "degree of deformability." Therefore a critical element required to compute and compare the prior art pouches is not provided by the instant specification.

Further concerning the thickness of the films in the prior art, as the instant specification and the prior art both use commercial film M8630 the thickness would also be identical and would therefore also have the same material properties such as "degree of deformability", and tensile strength.

The prior art and the instant examples both teach making pouches that are of identical volumes. As the volumes, thickness, and materials contained within the pouch are all identical and anticipated such material properties would also be identical.

Finally, the applicant has not argued that the process of creating the pouch would yield different properties. The examiner did not see any difference in the prior art methods of forming the pouch and the instant method of forming pouches. In fact by the applicant's own admission "The pouch can be prepared according to methods known in the art" (see page 11, lines 20-28). It is also taught that the typical method is

introducing the films into a mold and applying a vacuum. The identical method taught by Roberts.

Therefore as the prior art films, method of making the pouch and materials found within the pouch are each identical to the instant invention the examiner maintains that the properties of the instant pouch are inherently disclosed by the prior art.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Gregory E. Webb

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